

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DANIEL and ANITA DELGADO,
Individually and as next of friend of
E. and G. DELGADO, minor children,

Plaintiffs,

V.

GENUINE PARTS COMPANY,

Defendant.

Case No. _____

**Removal from Second Judicial
District Court of the State of New Mexico,
Bernalillo County,
Case No. D-0202-CV-2010-14806**

NOTICE OF REMOVAL

Genuine Parts Company, by and through its counsel of record, Miller Stratvert P.A., and pursuant to 28 U.S.C. §§ 1332, 1441, and 1146, hereby files this Notice of Removal of this cause from the Second Judicial District Court of the State of New Mexico, County of Bernalillo, to the United States District Court for the District of New Mexico, and alleges as follows:

1. Complaint. On or about December 28, 2010, Plaintiffs filed a Complaint for Negligence arising from a motor vehicle accident that occurred on April 4, 2009. Plaintiffs filed suit against The Estate of Ernest Chavez and Genuine Parts Company. Service on the Estate of Ernest Chavez was purportedly made on February 2, 2011. Service on Genuine Parts Company was made on February 3, 2011. On February 15, 2011 Plaintiffs provided written notice that they intend to dismiss The Estate of Ernest Chavez as a Defendant in this matter. As such, there is complete diversity in this action.

2. Basis for Jurisdiction in this Court. This Court has jurisdiction over this timely removed action pursuant to 28 U.S.C. § 1332 because there is the requisite complete diversity of citizenship between Plaintiffs and Genuine Parts Company, the sole Defendant in this action. 28 U.S.C. § 1332.

a. Citizenship of Plaintiffs. Plaintiffs Daniel and Anita Delgado are, and were at the time this suit was filed, residents and citizens of the State of New Mexico. *See* Complaint for Negligence, at ¶ 1. Thus, Plaintiffs are considered New Mexico citizens for purposes of determining federal diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(2).

b. Citizenship of Genuine Parts Company. Defendant Genuine Parts Company is, and at the time of filing of this action was, an organization existing under the laws of the State of Georgia, having its principal place of business in Atlanta, Georgia. *See* 28 U.S.C. § 1332(c)(1) (“a corporation shall be deemed to be a citizen of any State by which is has been incorporated and of the State where it has its principal place of business.”). Genuine Parts Company is therefore a citizen of the State of Georgia for the purpose of determining federal diversity jurisdiction.

3. Amount in Controversy. Plaintiffs are seeking damages in excess of \$2,000,000.00. Therefore, it is facially apparent that the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

4. Consent. No additional consent to this removal is required.

5. Notice Given. Genuine Parts Company is filing a Notice to Clerk of Removal with the Clerk of the State Court in which the action is currently pending pursuant to 28 U.S.C. § 1446(d), and will serve a copy of this Notice on all parties to the removed action.

6. Removal is Timely. On February 15, 2011, counsel for Defendant received written notice that Plaintiffs intend to dismiss The Estate of Ernest Chavez as a Defendant in this matter. The dismissal of The Estate of Ernest Chavez creates complete diversity of citizenship amongst the parties, thereby providing grounds for removal to this Court. Accordingly, this

Notice of Removal is timely filed within 30 days from the date Genuine Parts Company first ascertained this case is removable. *See* 28 U.S.C. § 1446(b).

7. Pleadings and Process. As required by 28 U.S.C. § 1446(a), Genuine Parts Company has attached copies of all state court process and pleadings to this Notice of Removal as Exhibit A.

8. Venue. The United States District Court for the District of New Mexico embraces the county in which the state court action is now pending. Therefore, this action is properly removed to this Court pursuant to 28 U.S.C. § 105(b)(1) and 1441(a).

9. If any question arises as to the propriety of the removal of this action, Genuine Parts Company respectfully requests the opportunity to brief any disputed issues and to present oral argument in support of its position that this case is properly removable.

10. Nothing in this Notice of Removal shall be interpreted as a waiver of relinquishment of Defendant's right to assert any defense or affirmative matter including, without limitation, the defenses of (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) failure to state a claim; or (5) any other procedural or substantive defense available under state or federal law.

WHEREFORE, Genuine Parts Company removes this action from the Second Judicial District Court for the State of New Mexico, County of Bernalillo, to this Court, pursuant to 28 U.S.C. § 1441.

DATED this 28th day of February, 2011.

Respectfully submitted,

MILLER STRATVERT P.A.

By: /s/ Todd A. Schwarz

Todd A. Schwarz

Attorneys for Defendant

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This hereby certifies that a true copy of the foregoing was mailed to the following counsel of record on the 28th day of February, 2011:

F. Michael Hart
Martinez, Hart & Thompson, P.C.
1801 Rio Grande NW
Albuquerque, NM 87104

/s/ Todd A. Schwarz

Todd A. Schwarz